

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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Michael and Jeremy Tompkins,	:	
	:	Civil Action No.: <u>5:11-CV-317</u>
Plaintiffs,	:	(NAM/ATB)
v.	:	
	:	
Credit Collection Services; and	:	<b>COMPLAINT</b>
DOES 1-10, inclusive,	:	
	:	
Defendants.	:	
	:	

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For this Complaint, the Plaintiffs, Michael and Jeremy Tompkins, by undersigned counsel, state as follows:

**JURISDICTION**

1. This action arises out of the Defendants' repeated violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), and the invasions of the Plaintiffs' personal privacy by the Defendants and their agents in their illegal efforts to collect a consumer debt.
2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1337.
3. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b), in that the Defendants transact business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

**PARTIES**

4. The Plaintiff, Michael Tompkins ("Father"), is an adult individual residing in North Syracuse, New York, and is a "consumer" as the term is defined by 15 U.S.C. § 1692a(3).
5. The Plaintiff, Jeremy Tompkins ("Son"), is an adult individual residing in North

Syracuse, New York, and is a “consumer” as the term is defined by 15 U.S.C. § 1692a(3).

6. Defendant Credit Collection Services (“Credit”), is a Massachusetts business entity with an address of 2 Wells Avenue, Department 9133, Newton, Massachusetts 02459, operating as a collection agency, and is a “debt collector” as the term is defined by 15 U.S.C. § 1692a(6).

7. Does 1-10 (the “Collectors”) is individual collectors employed by Credit and whose identities are currently unknown to the Plaintiffs. One or more of the Collectors may be joined as parties once their identities are disclosed through discovery.

8. Credit at all times acted by and through one or more of the Collectors.

#### **ALLEGATIONS APPLICABLE TO ALL COUNTS**

##### **A. The Debt**

9. Jeremy Tompkins incurred a financial obligation in the approximate amount of \$16,000.00 (the “Debt”) to PNC Bank, N.A. (the “Creditor”).

10. The Debt arose from services provided by the Creditor which were primarily for family, personal or household purposes and which meets the definition of a “debt” under 15 U.S.C. § 1692a(5).

11. The Debt was purchased, assigned or transferred to Credit for collection, or Credit was employed by the Creditor to collect the Debt.

12. The Defendants attempted to collect the Debt and, as such, engaged in “communications” as defined in 15 U.S.C. § 1692a(2).

##### **B. Credit Engages in Harassment and Abusive Tactics**

13. Around July 2010, Defendants started calling Michael Tompkins concerning

Jeremy Tompkins' debt.

14. Defendants disclosed that they were a debt collection agency and that the purpose of the calls was to collect a debt.

15. Defendants continued to call Michael Tompkins' residence despite the fact that he informed them that Jeremy no longer resided with his parents.

16. Defendants also placed automated calls with pre-recorded voice messages on Plaintiff's residential phone line in an attempt to collect the Debt.

17. Defendants placed numerous calls to Jeremy Tompkins' cellular phone line.

18. Defendants threatened to ruin Jeremy Tompkins' credit rating if he did not pay the Debt.

19. Defendants threatened to file a lawsuit against Plaintiffs if they did not pay the Debt. No such lawsuit has been filed to date.

20. In order to help his son Michael Tompkins agreed to make three (3) payments in the amount of \$100.00.

21. However, Defendants conducted an unauthorized withdrawal of another \$100.00, which caused insufficient fee charges to be made to Michael Tompkins.

22. Defendants failed to inform Jeremy Tompkins of his rights under the state and federal laws by written correspondence within 5 days after the initial communication, including the right to dispute the Debt.

### **C. Plaintiffs Suffered Actual Damages**

23. The Plaintiffs have suffered and continue to suffer actual damages as a result of the Defendants' unlawful conduct.

24. As a direct consequence of the Defendants' acts, practices and conduct, the

Plaintiffs suffered and continue to suffer from humiliation, anger, anxiety, emotional distress, fear, frustration and embarrassment.

**COUNT I**  
**VIOLATIONS OF THE FDCPA - 15 U.S.C. § 1692, et seq.**

25. The Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.
26. The Defendants' conduct violated 15 U.S.C. § 1692b(2) in that Defendants informed third parties of the nature of Plaintiff's debt and stated that the Plaintiff owed a debt.
27. The Defendants' conduct violated 15 U.S.C. § 1692b(3) in that Defendants contacted third parties in regards to the Plaintiff's debt on numerous occasions, without being asked to do so.
28. The Defendants' conduct violated 15 U.S.C. § 1692c(b) in that Defendants communicated with individuals other than the Plaintiff, the Plaintiff's attorney, or a credit bureau.
29. The Defendants' conduct violated 15 U.S.C. § 1692d(5) in that Defendants caused a phone to ring repeatedly and engaged the Plaintiffs in telephone conversations, with the intent to annoy and harass.
30. The Defendants' conduct violated 15 U.S.C. § 1692d(6) in that Defendants placed calls to the Plaintiffs without disclosing the identity of the debt collection agency.
31. The Defendants' conduct violated 15 U.S.C. § 1692e(5) in that Defendants threatened to take legal action, without actually intending to do so.
32. The Defendants' conduct violated 15 U.S.C. § 1692e(8) in that Defendants threatened to communicate false credit information.
33. The Defendants' conduct violated 15 U.S.C. § 1692e(10) in that Defendants

employed false and deceptive means to collect a debt.

34. The Defendants' conduct violated 15 U.S.C. § 1692f(5) in that Defendants caused charges to be made to the Plaintiff.

35. The Defendants' conduct violated 15 U.S.C. § 1692g(a)(1) in that Defendants failed to send the Plaintiff a validation notice stating the amount of the Debt.

36. The Defendants' conduct violated 15 U.S.C. § 1692g(a)(2) in that Defendants failed to send the Plaintiff a validation notice stating the name of the original creditor to whom the Debt was owed.

37. The Defendants' conduct violated 15 U.S.C. § 1692g(a)(3) in that Defendants failed to send the Plaintiffs a validation notice stating the Plaintiff's right to dispute the Debt within thirty days.

38. The Defendants' conduct violated 15 U.S.C. § 1692g(a)(4) in that Defendants failed to send the Plaintiff a validation notice informing the Plaintiffs of a right to have verification and judgment mailed to the Plaintiffs.

39. The Defendants' conduct violated 15 U.S.C. § 1692g(a)(5) in that Defendants failed to send the Plaintiff a validation notice containing the name and address of the original creditor.

40. The foregoing acts and omissions of the Defendants constitute numerous and multiple violations of the FDCPA, including every one of the above-cited provisions.

41. The Plaintiffs are entitled to damages as a result of Defendants' violations.

**COUNT II**  
**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –**  
**47 U.S.C. § 227, et seq.**

42. The Plaintiffs incorporate by reference all of the above paragraphs of this

Complaint as though fully stated herein.

43. Without prior consent the Defendants made telephone calls to the Plaintiffs' residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the Plaintiffs in violation of 47 U.S.C. § 227(b)(1)(B).

44. The foregoing acts and omissions of the Defendants constitute numerous and multiple violations of the Telephone Consumer Protection Act, including every one of the above-cited provisions.

45. The Plaintiffs are entitled to damages as a result of the Defendants' violations.

**COUNT III**  
**VIOLATIONS OF NEW YORK GBL § 349**  
**ENGAGING IN UNLAWFUL DECEPTIVE PRACTICES AND ACTS**

46. The Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully set forth herein at length.

47. The acts, practices and conduct engaged in by the Defendants and complained of herein constitute "deceptive acts and practices" within the meaning of Article 22A of the General Business Law of the State of New York, NY GBL § 349.

48. The Defendants willfully and knowingly engaged in conduct constituting deceptive acts and practices in violation of NY GBL§ 349.

49. The Plaintiffs have suffered and continue to suffer actual damages as a result of the foregoing acts and practices, including damages associated with, among other things, humiliation, anger, anxiety, emotional distress, fear, frustration and embarrassment caused by the Defendants.

50. By virtue of the foregoing, the Plaintiffs are entitled to recover actual damages, trebled, together with reasonable attorneys' fees.

**PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiffs respectfully pray that judgment be awarded in the Plaintiffs' favor and against the Defendants as follows:

1. Against the named the Defendants, jointly and severally, awarding the Plaintiffs actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
2. Against each of the named the Defendants, awarding the Plaintiffs statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A);
3. Against the named the Defendants, jointly and severally, awarding the Plaintiffs actual damages, trebled, pursuant to NY GBL § 349;
4. Against the named the Defendants, jointly and severally, awarding the Plaintiffs recovery of the costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3);
5. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B) & (C);
6. Against the named the Defendants, jointly and severally, awarding the Plaintiffs punitive damages in such amount as is found appropriate; and
7. Granting the Plaintiffs such other and further relief as may be just and proper.

**TRIAL BY JURY DEMANDED ON ALL COUNTS**

Dated: March 21, 2011

Respectfully submitted,

By /s/ Sergei Lemberg

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